

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**

LEGGETT & PLATT, INC.,
Employer,

and

INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS,
(IAM), AFL-CIO,
Union,

and

KEITH PURVIS, JAMES GREEN, ALBERT
HAWKINS, GLEN DIXON,
JACK KEITH, FREDRICK SANDEFUR,
BRIAN PATRICK, TIM KEETON,
JAMES WELLS, JUSTIN GILVIN,
and MARVIN ROGERS,

Proposed-Intervenors.

Case Nos. 09-CA-194057
09-CA-196426
09-CA-196608

**PROPOSED-INTERVENORS' EXCEPTIONS
TO THE ADMINISTRATIVE LAW JUDGE'S DECISION**

Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board, Keith Purvis, James Green, Albert Hawkins, Glenn Dixon, Jack Keith, Fredrick Sandefur, Brian Patrick, Tim Keeton, James Wells, Justin Gilvin, and Marvin Rogers hereby file these Exceptions to the Administrative Law Judge's (ALJ) Decision and Order in the above captioned case.

1. The ALJ erred in concluding that Respondent Leggett & Platt, Inc. ("Respondent") "failed to meet its burden of proving, through objective evidence, an actual loss of majority support as of March 1" and subsequently made unilateral changes to the terms and conditions of employment. ALJ Decision (ALJD) at p. 2 L.3-7; p. 15. L. 29-33.

2. The ALJ erred in denying the Motion to Intervene. ALJD at p. 2, L. 30-36 and n.4; and Tr. 34-38.
3. The ALJ erred in denying the Motion to Intervene. The ALJ wrongly held that Proposed Intervenors lacked a sufficient interest and their interest could be vindicated through the decertification process. ALJD at p. 2, L. 30-36 and n.4. Tr. 34-38.
4. The ALJ erred in denying the Motion to Intervene in as much as he did not discuss whether Respondents are able to adequately protect the Proposed-Intervenors interests. ALJD at p. 2, L. 30-36 and n.4. Tr. 34-38.
5. The ALJ erred in denying the Motion to Intervene because his failure to grant Intervention denies Proposed-Intervenors their right to due process. ALJD at p. 2, L. 30-36. Tr. 34-38.
6. The ALJ erred in finding that the Union's petition, which merely stated, "We the undersigned members of the International Association of Machinists and Aerospace Workers, Local Lodge 619, support the Union at Leggett & Platt, Inc." ALJD at p. 5, L.44-46 "contained unambiguous language." ALJD at p. 6 n.10; ALJD at p. 17, L. 9-11.
7. The ALJ erred in failing to credit and consider the testimony of those individuals who stated that they were confused as to the purpose of the Union's petition when they signed the Union's petition. ALJD at p. 6 n.10, p. 6, L. 15-19.; *see also* ALJD at p.17, L. 22-24.
8. The ALJ erred failing to credit Dwayne Hawkins testimony that he was coerced over Tolson because the ALJ's reasons for doing so are contrary to the evidence in the record. ALJD at p. 6-7 n.11, ALJD at p. 17, L. 24-28.
9. The ALJ erred in crediting Tolson's testimony as Tolson was not a credible witness. ALJD at p. 6-7 n.11, p. 17, L. 9-24.
10. The ALJ erred in refusing to credit the testimony of the employees who attended the Union

meeting that no one explained to them the purpose of the Union petition. ALJD p.17, L. 11-24.

11. The ALJ erred in not crediting Hawkins' testimony that he would be fired and his health insurance would double if he did not sign the pro-Union petition and subsequently finding there was no evidence of coercion or misrepresentation. ALJD at p. 17, L. 24-28. Hawkins testimony was reliable and consistent with the record. *See* Tr. 585-586; G.C. Ex. 6. The ALJ erred in ruling that Hawkins was not coerced into signing the petition by these statements. ALJD at p.16-17, L.50-2.
12. The ALJ erred in ruling that there were 181 signatures on the petition. ALJD at p. 7, L. 23-24. The petition was actually signed by 183 different employees.
13. The ALJ erred in refusing to credit Donnie Butler's verified signature on the petition. ALJD at p. 7-8, n. 12; *see also* ALJD at p. 15, n. 20. The ALJ improperly ruled that "None of the witnesses witnessed or could verify Butler's signature," ALJD at p. 8 n.12, but the evidence in the record conclusively demonstrates Butler signed the petition twice.
14. The ALJ was wrong to conclude McIntosh witnessing Butler's first printed signature was not sufficient to verify his signature on the petition. P. 7-8, n. 12. *see also* ALJD at p. 15, n. 20.
15. The ALJ erred in failing to accept Respondent's offer of proof that 11 of the individuals who signed the Union's petition opposed the Union on March 1. ALJD at p. 8 n.13. *Levitz* either allows the introduction of employee testimony when there are dual cards, *see Johnson Controls, Inc.*, NLRB Case No. 10-CA-151843, ALJD at p. 13, 2016 WL 626283 (Feb. 16, 2016), or *Levitz* should be modified to allow the introduction of this testimony.
16. The ALJ erred in summarizing the testimony of Cordell Roseberry and then crediting it over that of Stephen Day. ALJD at p. 13, L. 31-49.

17. The ALJ erred in his conclusion that Respondent was not entitled to rely on the decertification petition. ALJD at p. 15, L. 12-14, 26-31. The Respondent was entitled to rely on the testimony of the employees who testified they no longer supported the Union on March 1.
18. The ALJ erred in his conclusion in relying on *Levitz* and its progeny that the Union's failure to disclose its petition to Respondent was not in bad faith. ALJD at p. 16, L. 1-46. *Levitz* and its progeny should be modified and the Board should hold that unless a union reveals a counter petition prior to withdrawal, an employer cannot be held to have violated the Act if they withdraw recognition based on a facially valid majority decertification petition.
19. The ALJ erred in his conclusion that there was no merit to Respondent's contention that "certain of the crossover signatures should still be counted as evidence of the Union's loss of majority support because there was confusion, coercion, and misrepresentations made regarding the pro-Union petition." ALJD at p. 16, L. 47-50; 17, L. 1-8. This conclusion is not supported by the law or the record and the testimony of employees who attended the union meeting.
20. The ALJ erred in his conclusion that the Union's petition was unambiguous. ALJD at p. 17, L. 1-18.
21. The ALJ erred in his inference that the confusion on the part of employees signing the Union petition is unimportant because he found that it was not the result of the Union's "nefarious intent or conduct." ALJD at p. 17, L. 15-24.
22. The ALJ erred in crediting Tolson's testimony that "there was a union official at the strike sanction vote desk explaining what the sign-in sheet was for and to answer any questions" and that he was a credible witness overall. ALJD at p. 17, L. 15-24.

23. The ALJ erred in his conclusion that the testimony of the employees who signed both the decertification and the union petitions was irrelevant to deciding whether there was a loss of majority support. ALJD at p. 17, L. 30-49. *Levitz* either allows the introduction of employee testimony when there are dual cards, *see Johnson Controls, Inc.*, NLRB Case No. 10-CA-151843, ALJD at p. 13, 2016 WL 626283 (Feb. 16, 2016), or *Levitz* should be modified to allow the introduction of this testimony.
24. The ALJ erred in claiming “Respondent has presented no evidence that, prior to or as of March 1, any of these crossover signatories objectively reasserted that they no longer wanted the Union after they signed the pro Union petition. ALJD at p. 17-18, L. 49-3. The ALJ erred in refusing to allow the Respondent to question employees testifying as to whether they supported the Union on March 1, and instead required the Respondent to give offers of proof through counsel representation. Tr. 541-542; ALJD at p. 17, L. 3-5.
25. The ALJ erred in his conclusion that the Respondent failed to present objective evidence that as of March 1, a majority of the employees no longer wanted to be represented by the Union and therefore violated Section 8(a)(5) and (1) of the Act. ALJD at p. 18, L. 5-9.
26. The ALJ erred in his conclusion that an employer violates Section 8(a)(1) of the Act by soliciting, encouraging, promoting or providing assistance in the initiation, signing, or filing of an employee petition seeking to decertify the bargaining representative. ALJD at p. 20, L. 1-20. The more than ministerial aid standard should be overturned and employers should be free to give aid to a decertification petition consistent with Section 8(c). Thus, employer aid should be permissible as long as its speech promoting decertification does not contain a threat of reprisal or force or promise of benefit. Alternatively, the Board should treat decertification and union organizing petitions similarly, and hold the employer did not

commit an unfair labor practice in this instance under *Tecumseh Corrugated Box Co.*, 333 NLRB 1, 5-6 (2001).

27. The ALJ erred in finding that “in early April, Respondent’s Human Resource Manager Stephen Day directed an employee to meet with a fellow employee to sign the [second] decertification petition.” ALJD at p. 2, L. 9-21.
28. The ALJ erred in his conclusion that Stephen Day provided more than ministerial aid to the collection of the second decertification petition in violation of the Act, and that his non-verbal signal to Roseberry to speak with Purvis “had a reasonable tendency to interfere with, restrain, or coerce” employees in the exercise of their rights under the Act. ALJD at p. 20, L. 22-31. This conclusion is inconsistent with the record.
29. The ALJ erred in his conclusion that Respondent violated the Act by withdrawing recognition from, and refusing to bargain with the Union after March 1, 2017. ALJD at p. 21, L. 1-4.
30. The ALJ erred in ordering the Respondent to bargain with the Union and to adhere to the terms of the expired contract. ALJD at p. 21, L. 29-46. To the extent that a bargaining order is the traditional Board remedy of a violation of Section 8(a)(5), the Board should overturn its current precedent and rule that an affirmative bargaining order is an extreme remedy that should only be justified by balancing three considerations: (1) the employees’ Section 7 rights of self-organization and collective bargaining; (2) whether other purposes of the Act override the rights of employees to choose their bargaining representatives; and (3) whether alternative remedies are adequate to remedy the violations of the Act. *See generally Scomas of Sausalito v. NLRB*, 849 F.3d 1147 (D.C. Cir. 2017).
31. The ALJ erred by ordering imposition of a bargaining order instead of an election ALJD at p.

21, L. 29-46.

32. The ALJ erred by ordering the Respondent to bargain with the Union, adhere to the terms of the expired contract, and post a notice in its Winchester Kentucky facilities. ALJD p. 22, L. 10-40; p. 23, L. 1-36.

Respectfully Submitted,

/s/ Aaron B. Solem

Aaron B. Solem

Alyssa K. Hazelwood

c/o National Right to Work Legal
Defense Foundation, Inc.

8001 Braddock Road, Suite 600

Springfield, VA

703-321-8510

abs@nrtw.org

akh@nrtw.org

October 30, 2017

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Proposed-Intervenors' Exceptions to the Administrative Law Judge's Decision were filed and served on the following by electronic filing and email on October 30, 2017:

National Labor Relations Board
Office of the Executive Secretary
1015 Half Street SE
Washington, D.C. 20570-0001
Washington, D.C.
Via e-filing

A. John Harper,
Art Carter,
Littler Mendelson, P.C.
1301 McKinney Street,
Suite 1900
Houston, TX 77002
AJHarper@littler.com
ATCarter@littler.com

Zuzana Murarova, General Counsel
NLRB, Region 9
3003 John Weld Peck Federal Building
550 Main Street
Cincinnati, Ohio 45202-3271
zuzana.murarova@nrlb.gov

William Haller
Counsel for the Union
International Association of Machinists
9000 Machinists Place
Upper Marlboro, MD 20772-2687
whaller@iamaw.org

/s/ Aaron B. Solem
Aaron B. Solem